IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 486.

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

vs.

MICHIGAN PUBLIC SERVICE COMMISSION and MICHIGAN CONSOLIDATED GAS COMPANY,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

REPLY BRIEF FOR APPELLANT.

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This brief is submitted in reply to the briefs of the appellees, Michigan Consolidated Gas Company and Michigan Public Service Commission.

1. It is argued by Consolidated that Congress, by the Natural Gas Act, "confirmed to the State *full* regulatory power over direct sales of gas within the state made by an interstate pipe line company" (Consolidated Brief, pp. 17-18; emphasis added).

This does not accurately describe the operation of the Natural Gas Act on state regulation of sales in interstate commerce by a pipe line company direct to an industrial consumer. The Act left to the states not "full regulatory power" but regulatory power as broad as had existed prior to passage of the Act, except to the extent that state regulation may have been excluded by reason of affirmative Federal control. *Illinois Natural Gas Co.* v. *Central Illinois*

Public Service Co., 314 U. S. 498, 506 (1942); *Public Utilities Commission* v. *Gas Co.*, 317 U. S. 456, 468 (1943); *Panhandle Eastern Pipe Line Company* v. *Indiana Public Service Commission*, 332 U. S. 507, 521 (1947).

2. The curious suggestion is then made that since the regulatory power of Congress over interstate commerce includes power to prohibit, state regulatory power over interstate commerce also includes power to prohibit (Consolidated Brief, pp. 20-22). The answer to that suggestion of Consolidated is found on page 26 of its own brief in the quotation from *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U. S. 179 (1950):

> " 'The only requirements consistently recognized have been that the [state] regulation not discriminate against or place an embargo on interstate commerce, * * *' ".

This Court has frequently observed that the extent and character of Federal authority over interstate commerce does not differ from that retained by the states over local commerce. *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.*, 299 U. S. 334, 346-347 (1937); *U. S.* v. *Rock Royal Co-op.*, 307 U. S. 533, 569-570 (1939). It has never even hinted that the scope of state power over interstate commerce is comparable to the scope of Federal power. On the contrary, in the leading cases in which the power of Congress to prohibit interstate commerce has been upheld, Congress had acted to protect the states against interstate commerce which, by reason of the Commerce Clause, the states were powerless to prohibit. *In re Rahrer*, 140 U. S. 545 (1891); *Champion* v. *Ames*, 188 U. S. 321 (1903); *Clark Distilling Co.* v. *Western Maryland Railroad Co.*, 242 U. S. 311 (1917); *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.*, 299 U. S. 334 (1937).

3. Finally, the argument is made that the state statute under review does not conflict with Federal authority or policy and that if the statute as construed and applied here is held invalid, there will be a gap in regulation with dire results for Michigan commerce. This point is unsupported in law or by the record in this case.

We have already shown in our main brief, pages 21-22, 23, 25, that there is no local need for the Michigan statute, that the interests of domestic consumers are adequately protected by the Federal Power Commission and that the state action under the statute trespasses on the authority of the Federal Power Commission over interstate transportation of natural gas.

In addition, the Federal Power Commission points out in its Memorandum as *amicus curiae* that it requires an interstate pipe line company to obtain a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act for construction and operation of transportation facilities required to make direct industrial sales. In deciding whether to grant a certificate of facilities to serve an industrial customer in an area already being served by a utility, the Commission will, of course, consider the effect on that utility and on its customers. *Matter of Louisiana-Nevada Transit Company*, 2 F. P. C. 546 (1939), *aff'd. Arkansas Louisiana Gas Co.* v. *Federal Power Commission*, 113 F. 2d 281 (C. A. 5, 1940). See *Kentucky Natural Gas Company* v. *Federal Power Commission*, 159 F. 2d 215, 218-219 (C. A. 6, 1947).

The certainty of appellees that the Federal Power Commission is powerless to protect Michigan consumers in the present case is surprising in view of the complaints they made to the Federal Power Commission against the proposed sale of gas by Panhandle to the Ford Company (R. 409-410; 410-411).

Apparently, appellees want a dual system of licensing. They want the states to retain a veto power over any certificate for facilities on a direct industrial sale which Federal Power Commission might grant. This is not the "harmonious, dual system of regulation of the natural gas industry—Federal and state regulatory bodies operating side by side, each active in its own sphere"[1] contemplated by Congress. This is interference by the state with Federal control.

One brief refers to a "threatened reduction in the volume of gas furnished by Panhandle to Michigan Consolidated Gas Company and other local distributors" (Commission brief, p. 5). Panhandle made no such threat. In any event Panhandle could not reduce contractual deliveries to Consolidated unless the Federal Power Commission found, under Section 7(b) of the Natural Gas Act, that partial abandonment of service to Consolidated would be in the public interest. It is also urged that Panhandle sought to deprive Consolidated of its principal source of revenue by taking over service to Ford Motor Company and other industrial customers of Consolidated. The record shows that Panhandle did not seek to interfere with the existing contract for 15 million cubic feet per day between Ford Motor Company and Consolidated or with any other existing services. It sought only to compete for the additional requirements of the Ford Motor Company and for new industrial business (R. 191-192).

Respectfully submitted,

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[1] *Public Utilities Commission* v. *Gas Co.*, 317 U. S. 456, 467 (1943).